

1 Plaintiffs,
2 JOSEPH PADGETT and
3 DARLA PADGETT,

4 In pro per

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA,
7 SAN JOSE DIVISION

9 JOSEPH PADGETT and DARLA
10 PADGETT,

11 Plaintiffs,

12 v.

13 CITY OF MONTE SERENO, a
14 municipal entity; BRIAN
15 LOVENTHAL, an individual; A.
16 CURTIS WRIGHT, an individual;
17 ERIN BRODSKY, an individual;
18 BARBARA NESBET, an individual;
19 DAVID BAXTER, an individual;
20 LISA RICE, an individual; and DOES
21 2 to 100 inclusive,

22 Defendants.

CASE NO. C-04-03946 JW

**DECLARATION OF
SCOTT COOPER, CMC, IN
RESPONSE TO MOTION FOR
PROTECTIVE ORDER.**

Date: March 5, 2007

Time: 9:00 am

Judge: Hon. James Ware

Courtroom: 8, 4th floor

23 I, Scott Cooper, CMC, hereby declare as follows:

24 1. I submit this declaration in response to Defendants' Motion for a
25 Protective Order, and related documents. I make this declaration (except where
26 stated as based upon information and belief) based upon first-hand personal
27 knowledge of the facts set forth below and based upon my expertise in electronic
28 discovery and computer forensics, and if called upon to testify as a witness, I could
and would testify competently thereto under oath.

1 2. I am one of the founders and am Managing Director of INSYNC
2 Consulting Group, Inc., an independent information technology consulting firm,
3 with a specialization in Electronic Discovery and Computer Forensics, founded in
4 1984 and based in Los Angeles, California.

5 3. INSYNC has performed its forensics services for, among others, the
6 United States Department of Justice, The White House, Fortune 100 corporations
7 and major law firms and major accounting firms throughout the United States.
8 INSYNC's services have been used in conjunction with investigations, data
9 recovery, data reconstruction, data authentication, and general litigation.

10 4. Prior to being one of the founders of INSYNC in 1984, I was
11 employed as a senior consultant within KPMG Peat Marwick's Management
12 Consulting and Technology Practice. I am now a member (and senior officer) of
13 the High Technology Crime Investigation Association (HTCIA), the Institute of
14 Management Consultants (IMC), the American Society for Industrial Security
15 (ASIS), the Information Systems Security Association (ISSA), and Mensa. I am
16 certified by the California State Bar as an authorized MCLE course provider. I
17 lecture and teach on a regular basis, and have published numerous articles,
18 including the National Litigation Consultant's Review and California CPA
19 magazines.

20 5. I personally have over thirty years of training, education, and
21 experience with computer systems and associated data. My specialized focus
22 includes the forensic acquisition, analysis, and recovery of electronic data
23 contained within and related to computer systems and incorporated electronic data
24 and media. I have been qualified as a computer (systems, recovery, and forensics)
25 expert, as both a declarant and expert witness, in both Federal and State court, and
26 have been designated as a Special Master, and also designated as a Court-
27 appointed Referee. I recently completed an INSYNC engagement in the landmark
28 Federal case of Medtronic v Michelson involving the issuance of numerous critical

1 precedent-setting electronic discovery and computer forensics opinions, where our
2 client prevailed at jury trial, and received without appeal an immediate payment of
3 over \$1.3 billion, instead of the 20 year series of payments that the opposing party
4 was allowed.

5 6. Details of my background, experience, and qualifications appear in
6 my Curriculum Vitae attached hereto as Exhibit "A". My billing rate is \$425 per
7 hour, for technical forensic work and for expert declarations, and \$550 per hour
8 (with a six-hour minimum) for any testimony at deposition or trial.

9 7. INSYNC was engaged and retained by Joseph and Darla Padgett, in
10 pro per, in connection with the above-captioned matter, to provide expert services
11 and assistance with the issues related to and the performance of conducting
12 electronic discovery and computer forensics related work relating to this matter,
13 with emphasis on the safe and secure examination and retrieval of information
14 from defendants' computer systems, equipment, and data.

15 8. As an overview, I have a prevailing concern that the City and their
16 attorney, Mr. Todd Master, have continually failed to comply with their duty and
17 obligation to preserve, protect, and produce their electronically stored information
18 (ESI), as related to this case. My opinion is that the existing United States District
19 Court Judge James Ware's December 28, 2006 "ORDER GRANTING
20 PLAINTIFFS' MOTION TO ALLOW INSPECTION OF COMPUTER
21 EQUIPMENT" (the "ORDER") is correct and should be enforced immediately.
22 Furthermore, due to the City's seemingly continued delays and attempts to
23 obfuscate the process, any latitude in interpretation should be liberally interpreted
24 in favor of the plaintiff, whether or not the ORDER is silent or vocal on certain
25 topics.

26 9. As referenced in Mr. Master's motion (the "MOTION"), the Federal
27 Rules of Civil Procedure (FRCP), as amended effective December 1, 2006
28 (approximately 4 weeks prior to the ORDER), especially the 12 rules (26 through